

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 11-3224

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Apr 04, 2012

LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE
)	UNITED STATES DISTRICT
DANIEL MINAYA,)	COURT FOR THE SOUTHERN
)	DISTRICT OF OHIO
Defendant-Appellant.)	

ORDER

Before: SILER and SUTTON, Circuit Judges; HOOD, District Judge.*

Daniel Minaya pleaded guilty to conspiring to distribute and to possess marijuana and cocaine for intended distribution. *See* 21 U.S.C. §§ 841(a)(1), 846. On February 14, 2011, the district court sentenced him to 144 months of imprisonment and four years of supervised release. Minaya now appeals, arguing that his sentence was unreasonable. The parties have waived oral argument and we unanimously agree that it is not needed. Fed. R. App. P. 34(a).

In reviewing Minaya's sentence, we "first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall v. United States*, 552 U.S. 38, 51 (2007). If the sentencing decision is procedurally

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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sound, we “then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *Id.*

The presentence report indicated that Minaya had a guideline range of 188 to 235 months of imprisonment. However, the district court granted the government’s motion for a reduced sentence under USSG § 5K1.1, which resulted in a guideline range of 151 to 188 months. The court then varied downward from that reduced range and imposed a sentence of only 144 months.

Minaya argues that he should have received a lower sentence because he was addicted to drugs and alcohol, because there are no violent crimes in his criminal history, and because he was fifty-five years old at sentencing. However, the sentencing court considered these issues and there is no indication that the court was unaware of its discretion to vary further from the guideline range. Thus, the court’s decision not to exercise that discretion is only reviewable if Minaya’s sentence was: 1) imposed in violation of law; 2) based on an incorrect application of the guidelines; 3) based on an upward departure; or 4) plainly unreasonable and imposed for an offense for which there is no guideline. *See United States v. Santillana*, 540 F.3d 428, 431 (6th Cir. 2008). These factors are not applicable here.

The sentencing court considered the parties’ arguments, the applicable guideline range, and the other factors that are listed in § 3553(a). The 144-month sentence that Minaya ultimately received fell significantly below an already reduced guideline range. Under these circumstances, we conclude that his sentence was neither procedurally nor substantively unreasonable. *See United States v. Curry*, 536 F.3d 571, 573 (6th Cir. 2008).

Accordingly, the district court’s judgment is affirmed.

ENTERED BY ORDER OF THE COURT



Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Re: Case No. 11-3224, *USA v. Daniel Minaya*
Originating Case No. : 2:10-CR-86-1

Dear Counsel:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Benjamin P. Alexander
Case Manager
Direct Dial No. 513-564-7021

cc: Clerk of the U.S. District Court for the Southern District of Ohio

Enclosure

Mandate to issue